EXHIBIT 3
DATE 3/4/09
SB 102

Testimony *in Support of* SB 102:
Revise Public Water Supply Laws – Corrective Actions

March 4, 2009 House Natural Resources Committee

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Currently: Principal, The Cadmus Group Inc, Helena Office
- ❖ An Environmental Consulting Company providing contracting support to USEPA's Safe Drinking Water Act programs
- ❖ Also provide limited contract support (currently less than 1% of annual revenues) to Montana's Public Water Supply Program.

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Testimony

Federal safe drinking water regulations have recently addressed a need to ensure public water systems correct problems with their water systems that are identified as significant deficiencies. I have provided inspections of public water systems in Montana since 1985. My experience with this important process concurs with DEQ's concerns – that there needs to be clear authority to be able to require a system to correct significant problems. Correcting significant deficiencies does not mean bringing systems up to current design standards – that is not necessary. Correcting significant deficiencies means fixing serious problems that are documented.

- A *public water system* is a system that provides water to the public for human consumption to 25 or more persons daily or at least 15 service connections, at least 60 days of the year.
  - A public water system may be publically or privately-owned.
  - Public water systems include municipal systems, manufactured home courts, schools, subdivisions, daycares, restaurants, and other entities that have their own water system.

- A *significant deficiency* will be defined by the Board – they are not defined by the federal regulations.
  - They are reserved for the most serious deficiencies that should be corrected to protect public health.
  - Without this authority, enforcement is often dependent on a system violating a regulation. It is more protective and preventive to correct a problem before a violation occurs.
  - During our (Cadmus) training events on the Ground Water Rule for EPA, we heard from several states that they welcomed this requirement to ensure water systems take corrective actions.

- Attachments: excerpt from the National Primary Drinking Water Regulations: Ground Water Rule: Final Rule (71 *Federal Register* 65574) related to a Government Accountability Office report finding that some states lacked the authority to require correction of deficiencies.

- Without this authority Montana would not meet the requirements for primary enforcement authority for the Safe Drinking Water Act provisions.

I am here to testify my support for this essential Montana authority. The importance of being able ensure significant problems are corrected before they cause illness helps public water systems provide safe drinking water, and keeps oversight of the Safe Drinking Water Act provisions in our own, Montana, hands.

Federal Register

Wednesday,
November 8, 2006

Part II

Environmental Protection Agency

40 CFR Parts 9, 141, and 142
National Primary Drinking Water Regulations: Ground Water Rule; Final Rule

factors, coupled with information on contaminant occurrence and analysis of microbial waterborne disease outbreak data, indicated that public health protection can be strengthened by requiring regular sanitary surveys, specifying the scope of surveys, and requiring corrective action of significant deficiencies.

In 1995, EPA and the States (through the Association of State Drinking Water Administrators) issued a joint guidance on sanitary surveys entitled *EPA/State Joint Guidance on Sanitary Surveys* (USEPA/ASDWA, 1995). Recognizing the essential role of sanitary surveys and the need to define the broad areas that all sanitary surveys should cover, the guidance recommended eight elements for a comprehensive sanitary survey. The guidance also recommended the development of assessment criteria, proper documentation of results, and thorough follow-up, tracking, and enforcement after the survey. The IESWTR, (USEPA, 1998b), requires States to address the same eight elements in sanitary surveys conducted at surface water systems and at GWUDI systems. The GWR incorporates the same eight elements into the sanitary survey requirements for GWSs to be consistent with, and as comprehensive as, the IESWTR. Based on consultation with the States and EPA regions, EPA believes that the majority of States today include the eight elements in their sanitary survey programs for both surface water and GWSs.

In addition to requiring these eight elements, the GWR requires the State to conduct sanitary surveys no less frequently than every three years for CWSs and every five years for NCWSs. This rule provides the State with the flexibility to reduce the frequency for CWSs to every five years for systems that meet performance criteria (refer to Section IV.A.1 for criteria). These frequencies are consistent with the recommendations for surface water systems made by the Microbial/Disinfection Byproducts Federal Advisory Committee, which included various stakeholders representing a wide range of sectors in the drinking water community. Given this, EPA believes that the same three- and five-year interval for conducting sanitary surveys is appropriate for GWSs. The GWR requires the first sanitary survey cycle to be completed by December 31, 2012 for CWSs, except those that meet performance criteria, and December 31, 2014 for all NCWSs and CWSs that meet performance criteria. See Section VI of this preamble for explanation of initial sanitary survey completion dates.

As noted earlier, this regulation attempts to build on existing State public health programs to the extent possible. Consequently, the GWR allows individual elements of a sanitary survey to be conducted on a phased review schedule as part of ongoing State assessment programs within the established three-or five-year frequency interval. This allows States to more efficiently use existing assessment schedules and maximize the effective allocation of staff resources and expertise across a State in conjunction with other priorities. EPA believes that the frequency of sanitary surveys and the required eight sanitary survey elements in this rule ensure greater public health protection while providing adequate flexibility for States and systems to effectively implement the requirements. The GWR requires the initial sanitary surveys to be completed six years after rule promulgation for CWSs and eight years after rule promulgation for NCWSs. The six to eight year time frame for initial sanitary surveys is based on several considerations. First, States need time to adopt the rule and obtain primacy (two to four years allowed by the SDWA at 1413(a)(1)). In addition, systems are given three years to comply with drinking water regulations by the SDWA at (1412(b)(10)). Finally, States need three to five years to complete the first cycle of sanitary surveys because there are many GWSs and States have limited resources.

A key finding of the GAO report was that deficiencies identified in one sanitary survey were often found still uncorrected at the next sanitary survey. For example, in a four-State sample of 200 sanitary surveys, GAO found approximately 60 percent of the surveys cited deficiencies that were also cited in previous surveys. While the report indicated that smaller systems (serving 3,300 or fewer people) were in the greatest need of improvement, GAO found that, regardless of system size, previously identified deficiencies frequently went uncorrected. GAO found that some States lacked the authority to ensure that water system owners and operators correct documented deficiencies. Additional causes for uncorrected deficiencies included a lack of documentation or ineffective tracking of survey results. The Agency believes that a sanitary survey is an effective tool for identifying significant deficiencies. Once identified, it is also essential that such deficiencies be corrected in a timely manner. A study of the effectiveness of a range of best management practices shows that follow-up and correction of sanitary survey deficiencies were correlated with lower levels of total coliform, fecal coliform, and *E. coli* (ASDWA, 1998). Thus, this rule requires that systems coordinate with the State within 30 days of being notified of the significant deficiency and that the systems correct the significant deficiency (or be on an enforceable State-prescribed schedule) within 120 days of being notified of the significant deficiency. See Section IV.C for details on corrective action time frames.

3. What Were the Key Issues Raised by Commenters on the Proposed GWR Sanitary Survey Requirements?

The majority of commenters on the GWR proposal were supportive of a sanitary survey requirement for all GWSs. Most commenters supported the proposed frequencies of three years for CWSs and five years for NCWSs. Several commenters noted that some States conduct surveys at more frequent intervals than required in this rule. However, a few commenters suggested extending the frequency interval for CWSs, because they believed that CWSs would be less likely to have significant deficiencies.

The Agency believes that frequent, comprehensive sanitary surveys are an important proactive public health measure and that the minimum frequencies of sanitary surveys under this rule balance public health protection with State implementation issues. This rule requirement is consistent with the frequency required for surface water systems under the IESWTR. The GWR provides flexibility in allowing States to perform more frequent sanitary surveys or to reduce the frequency for CWSs to five years if the CWS meets performance criteria (Section IV.A.1). States also have the flexibility to phase-in the evaluation of sanitary survey elements within the required frequency interval. The Agency believes that a frequency of three years for CWSs and five years for NCWSs, combined with flexibility on both timing and implementation, appropriately considers limited resource issues while advancing public health protection.

EPA specifically requested comments on "grandfathering" sanitary surveys conducted under the TCR to satisfy the initial sanitary survey requirements of the GWR. The majority of comments favored allowing the use of sanitary surveys conducted under the TCR or existing State programs to meet the initial sanitary survey requirements of the GWR. These comments were largely based on an interest in reducing State

Enumeration of Malespecific (F+) and Somatic Coliphage in Water by Single Agar Layer (SAL). July, 2003. EPA–821–R–03–016.

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USEPA. 2002a. *Method 1600.* September, 2002. EPA 821–R–02–022.

USEPA. 2002b. *National Primary Drinking Water Regulations; Announcement of the Results of EPA's Review of Existing Drinking Water Standards and Request for Public Comment.* 67 FR 19030, April 17, 2002.

USEPA. 2002c. *Method 1604: Total Coliforms and Escherichia coli in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium).* September, 2002. EPA 821–R–02–024.

USEPA. 2001a. *Method 1601: Male-specific (F+) and Somatic Coliphage in Water by Two-step Enrichment Procedure.* Office of Water, U.S. Environmental Protection Agency, Washington, DC 20460. EPA 821–R–01–030.

USEPA. 2001b. *Method 1602: Male-specific (F+) and Somatic Coliphage in Water by Single Agar Layer (SAL) Procedure.* Office of Water, U.S. Environmental Protection Agency, Washington, DC 20460. EPA 821–R–01–029.

USEPA. 2000a. *National Primary Drinking Water Regulations: Ground Water Rule; Proposed Rule.* 65 FR 30194, May 10, 2000. EPA–815–Z–00–002.

USEPA. 2000b. *Stage 2 Microbial and Disinfection Byproducts Federal Advisory Committee Agreement in Principle.* 65 FR 83015, December 29, 2000.

USEPA. 2000c. *Guidelines for Preparing Economic Analyses.* September, 2000. EPA 240–R–00–003.

USEPA. 2000d. *Science Advisory Board Final Report.* Prepared for Environmental Economics Advisory Committee. July 27, 2000. EPA–SAB–EEAC–00–013.

USEPA. 2000e. *Health Risks of Enteric Viral Infections in Children.* Office of Science and Technology, Washington, DC. EPA–822–R–00–010.

USEPA. 2000f. *Regulatory Impact Analysis of the Proposed Ground Water Rule.* April 5, 2000.

USEPA. 2000g. *Baseline Profile Document for the Ground Water Rule.* Final Draft. July, 2000.

USEPA. 2000h. *Science Advisory Board Letter Report on EPA's Draft Proposal for the Ground Water Rule.* June 30, 2000. EPA–SAB–DWC–LTR–00–005.

USEPA. 2000i. *National Drinking Water Advisory Council Recommendations.* May 11, 2000.

USEPA. 2000j. *National Primary Drinking Water Regulations: Public Notification Rule.* 65 FR 25982, May 4, 2000.

USEPA. 1999. *Drinking Water Criteria Document for Enteroviruses and Hepatitis A: An Addendum.* January 15, 1999. EPA–822–R–98–043.

USEPA. 1998a. GWR vulnerability assessment study, April 3, 1998. Unpublished report prepared by International Consultants, Inc. for the Office of Ground Water and Drinking Water, 29 pp.

USEPA. 1998b. *National Primary Drinking Water Regulations. Interim Enhanced Surface Water Treatment Rule* (IESWTR). 63 FR 69477, December 16, 1998.

USEPA. 1998c. *National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts; Final Rule.* 63 FR 69389, December 16, 1998.

USEPA. 1998d. Wisconsin migrant worker camp drinking water quality study. Unpublished report. Prepared for U.S. EPA Region V, Safe Drinking Water Branch, July, 1998. 10 pp.

USEPA. 1997a. *Ground Water Disinfection Rule Workshop on Ground Water Protection Barrier Elements—Final Proceedings.* March 26–28, 1997.

USEPA. 1997b. *Response to Congress on Use of Decentralized Wastewater Treatment Systems.* April, 1997. EPA 832–R–97–001b.

USEPA. 1997c. *Policy for Use of Probabilistic Analysis in Risk Assessment.* Office of Research and Development. May 15, 1997.

USEPA. 1997d. *EPA Method 1600: Membrane Filter Test Method for Enterococci in Water.*" May, 1997. EPA–821–R–97–004.

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USEPA. 1989b. *Drinking Water; National Primary Drinking Water Regulations: Disinfection; Turbidity,* Giardia lamblia, *Viruses,* Legionella, and *Heterotrophic Bacteria;* Final Rule. 54 FR 27486, June 29, 1989.

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List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Incorporation by reference, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: October 11, 2006.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows: